STATE OF MAINE

BEFORE THE JUSTICES OF THE
MAINE SUPREME JUDICIAL COURT

Docket No. OJ-17-1

In the Matter of Request for Opinion of the Justices
Relating to Questions Posed by the Senate

REPLY BRIEF OF THE COMMITTEE FOR RANKED CHOICE VOTING

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INTRODUCTION

The various briefs challenging the constitutionality of ranked choice voting fail utterly to explain how, contrary to over 120 years of clear precedent, the circumstances here present a solemn occasion. They equally fail to identify any constitutional provision that "directs" a specific method of conducting elections or defines a "vote" in the narrow way they propose. The Justices should decline the invitation to find a solemn occasion exists; should they accept that invitation, they should reject the crabbed view of the Constitution being urged upon them.

1. Solemn Occasion. Our initial brief set out the overwhelming authority establishing that no solemn occasion exists when the Legislature asks the Justices for an interpretation of existing law, or when there is no matter of live gravity pending in the Legislature, or when one branch of government seeks an advisory opinion about the power and duties of another. *See* Br. of Committee for Ranked Choice Voting (hereafter "Committee") at 4-12.

To avoid this clear line of authority, the Attorney General and the Senate assert that "[g]uidance from the Justices at this point would permit the Legislature and the Governor to consider approaches to any issues which the Justices may identify before the Legislature adjourns." Br. of Senate at 8; Br. of Attorney General (hereafter "AG") at 12. This invitation to the Justices to engage in the legislative process is precisely what the strict limitations on issuance of advisory opinions were meant to avoid – a trampling on the fundamental doctrine of

separation of powers. There is no question here about the Legislature's authority to propose a constitutional amendment or take other actions with respect to the statute. Nor has any issue pending before the Legislature been identified. The notion that it needs unspecified "guidance" falls woefully short of a solemn occasion.

Apparently recognizing the futility of this argument, the Attorney General cites two Opinions of the Justices for the proposition that questions about implementation of a law may present a solemn occasion. Br. of AG at 13. Far from supporting the Attorney General's position, these opinions reinforce the conclusion that no solemn occasion is presented here.

In *Opinion of the Justices*, 460 A.2d 1341 (Me. 1982), a citizen initiated referendum had been passed that called for a retroactively applied annual adjustment to eliminate inflation-induced increases in state income tax. On November 22, 1982, the Secretary of State certified the results of the election. Two days later, Governor Brennan requested an opinion, noting that he "must make a public proclamation of these results...on or before December 2, 1982. ..." *Id.* at 1343. The Justices responded on December 14, almost a month before the act became effective. Notably, the Justices declined to answer a number of the questions posed because they were either hypothetical or involved questions involving the power and authority of another branch of government:

> We must decline to answer questions 6 and 7. In both, the Governor inquires as to the powers of the Legislature. Only the Legislature, and not the Governor, is in the position

> to take immediate action on the answers. It is well established that the Justices will not answer a request made one branch of government for an advisory opinion regarding the power, duty, or authority of another branch.

Id. at 1349.[1]

Similarly, in *Opinion of the Justices*, OJ-98-1(July 31, 1998), Governor King sought the opinion of the Justices with respect to implementation of a statute relating to the sales tax with ambiguous timing requirements. Under one interpretation he was obligated to take action within three weeks to implement a reduction in the sales tax. Again, this involved a request by the Governor, not the Legislature, about his duties regarding some immediate action. Accordingly, he sought the opinion of the Justices on July 2nd and supplemented by communication on July 24th. They answered on July 31st, because his questions concerned "[the Governor's] obligations in implementing a sales tax reduction and because the timing of that reduction has significant implications with a current biennial budget." *Id.* at ¶2.

Nothing could be less relevant to the circumstances here – there is nothing that requires the immediate action of the Legislature since there is nothing pending before it. To the extent that the Senate seeks "guidance" as to how the Secretary of State should implement the statute, that request impermissibly seeks an opinion with respect to the duties and obligations of another branch of government.

The claims of the Attorney General and the Senate that a solemn occasion

[1] Also: "That a response to a question would merely aid a governor in proposing measures to the Legislature does not present a solemn occasion...Until the Legislature has under active consideration a bill to amend or modify the initiated measure, the question of the powers versus the Legislature lacks live gravity; until then, the question is tentative, hypothetical and abstract." *Id.* (internal citations omitted).

exists based on the Legislature's obligation to fund implementation of the statute also fall woefully short. The Legislature has plenary authority over appropriations and decisions to fund or not. *See, e.g.*, 20-A M.R.S.A § 15752 (mandating State funding of 55% of K-12 education, a goal never achieved).

Indeed, the funding argument rings particularly hollow. Although the Attorney General and the Senate talk about a $1.5 million price tag, Secretary of State Dunlap at the February 28, 2017 appropriations hearing on his budget testified as follows:

> "We know what we have to do now. As we begin to explore the implementation of ranked choice voting, what that will take for resources right now, will really require more ideas than people...When we get to next year, January 1st, we are supposed to be ready to implement ranked choice voting. Of course, that won't really matter to anyone until the June [2018] primaries. But I think by that time we will have a much better idea of what our resource needs will be if they are any different from what they are now. I think at that point we can come to [the Appropriations and Financial Affairs Committee] with a lot of confidence in what our request would be for supplemental budget in the future."[2]

There plainly is no immediate concern in this session about the need for funding.

Finally, the assertions about chaos are wildly overblown, *see* Committee Br. at 9-12, particularly in light of the persuasive arguments about the Act's constitutionality. And, as pointed out by Marshall Tinkle in his Reply Brief discussing *State v. Poulin*, 105 ME 224, 74 A. 119 (1909), even if the Act were ultimately declared unconstitutional with respect to any election, the acts of anyone elected under the Act would continue to be valid.

For all these reasons, as well as the reasons identified in our initial brief, the Justices should decline to answer the questions posed by the Senate.

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[2] Transcribed from audio recording available here: https://www.youtube.com/watch?v=FnviGr4zSSc.

2. Plurality. The briefs of the opponents assert that the Constitution "directs" that there can only be a single round of ballot counting and a single expression of preference.[3] Although this assertion sounds definitive, the briefs point to no constitutional provision that bars multiple tabulation rounds as contemplated by the Act or that defines a vote as only a single expression of preference. Accordingly, the only way to conclude, as these briefs do, that ballot counting must be confined to a single round limited to an expression of preference for a single candidate is if some constitutional provision by necessary implication leads to that result.

No such necessary implication can be found. Indeed, the only real argument advanced by the opponents to support this claim is that "this is the way we've always done it." But discomfort with change is not a constitutional argument. The cases interpreting ranked choice voting fully support the concept that a ranked choice vote is a vote,[4] so there can plainly be no "necessary implication" to the contrary to be drawn from the word "vote."

Given this Court's and the Justices' longstanding view of the Constitution as an evolving document with the flexibility to adapt as society changes, there simply is no reason to construe the word "vote" so narrowly. If the narrow

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[3] *See* Br. of AG at 17; Br. of House Republican Caucus and Maine Heritage Policy Center (hereinafter "Caucus") at 7; Br. of Senate at 21-23.

[4] *See Dudum v. Arntz*, 640 F.3d 1098, 1107 (9th Cir. 2011) (contrasting the single "vote" of a multi-preference ballot with a new round of voting in a runoff election); *Minnesota Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 692-93 (Minn. 2009) (a multi-preference ballot that counts toward one candidate at a time is one vote); *See also* Br. of FairVote at 17-20; Br. of Professor Dmitry Bam at 12-13.

interpretation of "vote" urged by the opponents, which ultimately amounts to "this is how we have always done it," were the constitutional standard applied in Maine, then the Court and the Justices would not have concluded that women could be appointed to government positions or that the meaning of the public use doctrine evolves with the times. *See Opinion of the Justices*, 119 Me. 603, 113 A. 614, 616-17 (1921); *Opinion of the Justices*, 231 A.2d 431, 433 (Me. 1967). This constitutional flexibility has been the hallmark of the Court's jurisprudence. In combination with the clear recognition by courts across the country that a ranked choice vote is a vote, this flexibility requires honoring the people's power to enact ranked choice voting.[5]

The one case cited in any of the briefs to suggest a contrary view is

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[5] The Attorney General suggests that major changes in the election process have always been done by constitutional amendment, implying the myriad statutes in Title 21-A must be minor, citing as examples Me. Const. art. II, §4, authorizing absentee voting, and art. II, §5, authorizing use of mechanical voting machines. The legislative debate regarding absentee voting shows that the legislatures viewed this amendment as anything but a major or important change to the election process. During the debate, Representative Chase stated the following:

> Now some may think that this is not a very important matter. The sole purpose of this resolve is to eliminate from the Constitution more than one entire page which relates to nothing except voting by troops in the field during the Civil War.
> Now there are two reasons which I think should be controlling that this ought to pass...This is the section of the Constitution which fixes the election date in September, and I should think it would very much encourage the Democrats because if this section can be changed in one respect, they might have ground for hope that some day it could be changed in another. (Laughter)
> Now, furthermore, and this is the reason which should appeal to the entire House, if we can eliminate from the Constitution this more than one page which begins on page 4, then the next reprint of the Constitution which will be made in the statutes to be revised at the next session would move over onto page 4 the provisions of the Constitution relating to the apportionment of Representatives, which might make it more likely that the members of the Legislature would read the Constitution up to that point some day. (Laughter)

2 Legis. Rec. H-2158, 2158 (Reg. Sess. 1951). No mention is actually made about absentee ballots. Little is known of the perceived need for the voting machines amendment because of an absence of legislative debate, but Tinkle refers to its purpose as "[a]dapting to technological change". Tinkle, *The Maine State Constitution: A Reference Guide* 58 (1992). Clearly, the significance of the change to the election process bears no correlation to the vehicle of the change, whether it be by constitutional amendment or by statute.

Rockefeller v. Matthews, 459 S.W.2d 110 (Ark. 1970). Tellingly, that case is not about ranked choice voting. Rather, it involved a statutory requirement that there be a runoff election in the case of no majority winner in the general election. The Arkansas Supreme Court held that the Legislature could not by statute require a runoff election to achieve a majority, where the Constitution declared the winner of the original election was to be by a plurality. Ranked choice voting does not suffer from that defect – it determines a winner by a plurality in a single election.

The Attorney General misleadingly uses speculation to try to show that ranked choice voting is somehow not a plurality system. In her table on page 8 of her brief, she makes assumptions about how ballots would be cast to demonstrate that the ultimate winner would have a majority. Apart from the fact that her tabulation confuses ballots and expressions of preferences, even accepting her assumptions, it is easy to see how a "plurality winner" could emerge. For example:

A	100	eliminated			
B	250	+70	320	+120	440
C	150	eliminated			
D	300	+60	360	+130	490
E	200	+95	295	eliminated	
	1,000	25 exhausted	975	45 exhausted	930

As the table shows, the ultimate winner here received 49% of the 1,000 ballots cast—a plurality, not a majority. In any case, the use of plurality in the Constitution, as many have pointed out, obviously cannot exclude a winner

receiving the most votes just because it was also a majority, nor could it exclude somebody who won with all the votes in an unopposed election. This simply puts more freight on the word plurality than the word can possibly bear.[6]

Finally, the history behind the plurality provisions of the Constitution in fact supports rather than disallows use of ranked choice voting: "[t]he object of the constitutional provisions respecting elections is to furnish as many safeguards as may be against a failure, either through fraud or mistake, correctly to ascertain and declare the will of the people as expressed in the choice of their officers and legislators." *In re Opinions of the Justices*, 70 Me. 560, 561 (1879). Ranked choice voting seeks to ascertain and declare the broad will of the people and is consistent with the Constitutional mandate of election by a "plurality of all votes returned."

The plurality change to House elections occurred decades before the changes to the Senate and Governor. As highlighted by a legislative committee investigating an early proposal: "it is often times difficult, if not impossible, to effect a choice" by majority in house elections. "Some districts met last year, thirteen or fourteen times, without effecting a choice...This state of things certainly demands a remedy" for House elections. [7] Although the proposed

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[6] As numerous of the supporting briefs have pointed out, a ranked choice vote allows people to express their preferences in a more nuanced and expansive way than a single preference system; how it will be implemented and what the results will be are hypothetical and speculative at this point. One actual example of how it has worked is Portland, which has conducted two mayoral elections using ranked choice voting. In both those elections, the candidate leading after the first round ultimately won the election. In the first election it was by a plurality after several rounds (there were 15 candidates) and in the second by a majority after the first round.

[7] REPORT AND RESOLVE NO. 38, 24th Leg. Senate, at 8 (1844). A copy is attached.
In contrast, for elections for Senator and Governor, that same report concluded that, unlike the repetitive

amendment considered by the voters in 1847 included a proposal to change majority to plurality in elections for the Senate and Governor as well as the House, the voters adopted only the plurality provisions related to the House, not the Senate or Governor. *See* Berry, Peter Neil, "Nineteenth Century Constitutional Amendment in Maine" (1965), Electronic Theses and Dissertations, Paper 2385, at 85-94.[8] Changes to senatorial elections continued to be proposed several times before ultimate adoption in 1875, "reflect[ing] the growing sentiment toward a final determination of governmental officers by the people." *Id.* at 87.

As our initial brief demonstrated, it was political mischief by the Legislature that led to the eventual replacement of the majority requirement with the plurality requirement for Governor. Br. of Committee at 21-25. Contrary to the conclusion drawn by the House Republicans, Br. of Caucus at 24 & n. 19, the reaction to the outrageous behavior of the politicians is what finally convinced the people to eliminate the majority requirement and wrest control over elections from the politicians. The history of each of these changes supports, rather than precludes, the implementation of ranked choice voting, which determines the outcome, in a single election, by a plurality of all the votes returned, using a method that captures a more nuanced expression of the voters' preferences.[9]

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meetings that had frustrated elections of House members, for "Governor and Senators, the constitution provides that but one popular election should be held, inasmuch that, in case of no choice the Legislature are directed make it according to prescribed rules." *Id.*

[8] Excerpts attached, available in its entirety at http://digitalcommons.library.umaine.edu/etd/2385.

[9] Contrary to the suggestion of some, Br. of Caucus at 13-14, the 1864 removal of the constitutional provision regarding Legislative authority to "prescribe a different mode of returning, [footnote continues] examining and ascertaining the election of the representatives" cannot be read to preclude statutory

3. Sort, Count and Declare. The Committee supports and adopts the arguments of FairVote and the League of Women Voters with respect to the constitutionality of the sort, count and declare provisions. The experience of other jurisdictions demonstrates that, contrary to the claim of the Deputy Secretary of State, there are ways to conduct a ranked choice election with local sorting, counting and declaring and central tabulation. *See* Affidavit of Jeanne Massey, ¶¶ 2-8 (detailing how voters' preferences are counted in a highly transparent process at the local precinct level in Minnesota, with spreadsheets detailing all the rankings created; only the tabulations, as in Maine, are done centrally). Because the opponents have the burden of proving that there is no way to interpret the statute that satisfies the Constitution, *Aseptic Packaging Council v. State*, 637 A.2d 457, 459 (Me. 1994), the Justices accordingly cannot find that the statute is facially unconstitutional, particularly since the Secretary of State has broad discretion in implementing the statute.

CONCLUSION

For the foregoing reasons, as well as those in our initial brief, the Justices should decline to answer the Senate's questions. If any answers are to be given, however, they must be in the negative and uphold the people's right to determine how to conduct their elections.

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enactment of a new method of vote casting and tabulation since, in 1870, this legislative authority was restored to "prescribe the manner in which the votes shall be received, counted, and the results of the election declared," for all offices, as was explained in the Brief of Marshall Tinkle at 17-18.

Dated: March 17, 2017

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Legislative Documents of the State of Maine,
Report and Resolve No. 38, 24th Leg. Senate (1844)

Senate documents
1844
Footnote 9

DOCUMENTS

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PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1844.

AUGUSTA:
WM. R. SMITH & CO., PRINTERS.
1844.

TWENTY-FOURTH LEGISLATURE.

No. 38.] [SENATE.

REPORT AND RESOLVES

TO AMEND

THE CONSTITUTION.

[Wm. R. Smith & Co....Printers.]

STATE OF MAINE.

IN SENATE, February 23, 1844.

ORDERED: That 500 copies of the following Report and Resolve be printed for the use of the Legislature.

JERE HASKELL, *Secretary.*

REPORT.

THE committee to which was committed the subject of investigating the subject of the system of plurality elections, and the usages of other States upon the system of elections, have attended to the duty assigned them, and beg leave to submit the following

REPORT:

In all popular assemblies or governments, where decisions of questions depend upon an aggregate expression of individual sentiment, made known by ballot or *viva voce*, it is most natural to conclude that a *majority* of those who vote should control.

Where the question at issue admits of but two sides, and a simple expression of yea or nay is all that is required, this mode of settling it is the most just; but in cases where more than two positions can be taken, and a great diversity of sentiment prevails, the determining it by majorities is sometimes impossible, and instances often occur where manifest injustice can be exercised by a few individuals towards a greater number.

In the strict acceptation of the term "majority," as it is employed in an official count of the votes to determine the result of an election, we mean the number which any candidate had over and above one half of the whole number of ballots cast.

Now it not unfrequently happens that, although a greater number of individuals may desire a result, they are nevertheless debarred from effecting it, by a very few, who, at the present day, emphatically

style themselves the "balance of power." For instance, there may be one hundred and two votes thrown; on the majority system, 52 are necessary for a choice. If it be for a candidate for office, A may have 50, B may have 50, and C only 2. Here one hundred men are held in check by *two*, and they can triumphantly say to the mass, you must either give up your own opinions, your belief and preferences, and combine together, or come over to us.

In other instances, where there are several factions, they can bear more tyrannical sway than this, because there is less prospect of a union, than there is where but three divisions exist.

Where there are, we will say, four or five parties—the numerical strength of each may be such, that a perfect union of any two of them cannot prevail, and there never can be a choice until they come over to a third, or a third to them.

Combinations of figures may be formed almost endlessly to illustrate this. For example, suppose 100 votes are thrown, necessary for a choice, 51—A has 25, B has 15, C has 16, D has 20, E has 24. Now either two of these factions, if united, cannot effect a choice.

The friends of the majority system contend, with some reason, that although a comparatively few may hold the balance of power, and thus stop the whole operations of a community, or government, yet not so great injustice will be done, as is sometimes the case under the plurality system. By "plurality" is meant the *most*, or highest number. One is said to be elected by a plurality of votes, when he comes in by having the highest number of votes of any of the candidates voted for. In the above instance, where A has 25, B 15, C has 16, D has 20, E has 24—A would be declared elected, although he had only one quarter of all the votes thrown, while the other three quarters are deprived of their candidate, and must submit to the rule of a small fraction of the whole number. Twenty five thus rule seventy five.

These are extreme cases, it is true, but they are such as often happen in popular elections, and it shows that both systems have their evils, which cannot in the nature of things, be remedied. There are two evils, however, attending the majority system, which

do not so often occur in the plurality system. One evil is, that a very small number, as we before stated, may often times hold the balance of power, prevent a choice *in toto*, and thus deprive a much larger number of individuals of their choice, than we believe can possibly be done by the plurality system, for by this a choice is almost *always made*.

The other evil is, that if all parties should adhere perseveringly to their candidates, there never could be a choice, and the time employed in balloting would be thrown away. While, on the plurality system, the chances of effecting a choice would be incomparably greater, and much time thus saved. It is true, that on the latter plan, in cases where two candidates have an equal number of votes, and those two are the highest number, there would be no choice, but the chances for this occurrence, are much fewer than for the other contingency, and this may be obviated by taking these two highest numbers forming a "tie," and carrying them before another tribunal to decide between them—thus, in this instance, for example, should there be 100 votes thrown for Governor—40 of them for A, and 40 of them for B, and 20 for C; there would then be no choice—but A and B might be presented to the House or to the Senate, or to both in joint ballot, or even back again to the people themselves, as the only candidates from which a choice would or must be made, and although the contingency might happen that a tie might again occur, yet the chances for it are so remote, that it may be considered next to impossible.

In looking over the constitutions of the several States in the Union, we find that the majority system for certain offices has been departed from in a great number of instances, and the plurality system adopted, and we have never heard any complaint in regard to it.

In the election of President and Vice President, the highest honor in our power to bestow, the electors in Maine are chosen by plurality.

The following tabular view will show at a glance where this system obtains, and what offices are filled by this mode of voting.

States.	*Officers chosen by plurality.*	*Remarks.*
Connecticut.	Senators.	
Tennessee.	Governor.	
Michigan.	Governor and Lieut. Gov.	
New York.	Governor and Lieut. Gov.	
Arkansas.	Governor.	Legislature chosen every 2 years.
Illinois.	Governor and Lieut. Gov.	Governor chosen once in 4 years. Legislature once in two years. Session held annually.
Delaware.	Governor.	Governor chosen every 3d year. Senators chosen every 3d year. Representatives annually.
Indiana.	Governor and Lieut. Gov.	Senate every 3 years. Governor holds office 3 years.
Ohio.	Governor.	Senate chosen every 3d year.
Mississippi.	Governor.	Governor holds office 2 years. Senate hold office 4 years. Representatives hold office 2 yrs. Session held biennially.
N. Carolina.	Governor.	Governor holds office 2 years. Session biennial.
Missouri.	Governor and Lieut. Gov.	Elections biennially. Senate hold office 4 years. Governor holds office 4 years, and is ineligible to same office for next four years.
Kentucky.	Governor and Lieut. Gov.	Senate hold office 4 years. Governor holds office 4 years. and is ineligible for next 4 years.
Virginia.	Senate.	Governor chosen by majority vote in joint ballot of Legislature.

A constitution has been defined to be "the principles on which a government is formed and conducted."

It has also been remarked that "on the voluntary association of men in sufficient numbers to form a political community, the first step to be taken for their own security and happiness is to agree on the terms on which they are to be united, and to act.

They form a constitution or plan of government suited to their character, their exigencies and their future prospects. They agree that it shall be the supreme rule of obligation among them."

The first compact of the kind, of a genuine republican nature, was drawn up in the cabin of the Mayflower, and subscribed to by the intrepid Puritans, before they had effected a settlement upon the shores of New England*. The principles then and there in-

* The following is a copy of the compact referred to.

In the name of God Amen. We whose names are underwritten, the

culcated have been, as it were, inwoven into the very hearts and souls of the sons of New England. To this veneration of the fundamental principles of republican government thus established, is to be attributed our regard for the laws and good order, and our acquiescence to the operations of the statute, while in existence, even when, in many instances, it is productive of hardships that no arbitrary physical power could enforce. This deep and reverent feeling for the constitution that has been founded on equal rights, and received the sanction of the people, is the palladium of our liberties and the corner stone of our government, and should not be trifled with by often proposing changes for light and trivial causes. For, although it be a duty to make it perfect, yet its stability is a paramount and necessary requisite to ensure happiness to the peo-

loyal subjects of our dread sovereign Lord, King James, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith, &c. having undertaken for the glory of God and advancement of the christian faith and honor of our king and country, a voyage to plant the first colony in the Northern parts of Virginia, do by these presents, solemnly and mutually in the presence of God and of one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof, do enact, constitute and frame such just and equal laws and ordinances, acts, constitutions and offices from time to time as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due subjection and obedience.

In witness whereof, &c. &c.

Baylies, in commenting upon this compact observes: "This brief, and comprehensive and simple instrument established a most important principle, which is the foundation of all the democratic institutions in America, and is the basis of the Republic.

Many philosophers have since appeared, who have in labored treatises, endeavored to prove the doctrine that the rights of man are inalienable, and nations have bled to defend and enforce them, yet in this dark age, the age of despotism and superstition, when no tongue dared to assert and no pen to write this bold and novel doctrine, which was then as much at defiance with common opinion as with actual power, of which the monarch was held to be the sole fountain, and the theory was universal, that all popular rights were granted by the crown, on this remote wilderness, amongst a small and unknown band of wandering outcasts, the principle *that a majority of the people shall govern, was first conceived and was first practically exemplified.*

[Baylies, vol 1, p. 89.

ple, and render it productive of the "greatest good to the greatest number."

Impressed with these views of the subject, your committee would recommend caution and circumspection in our action. Considering the great regard which the people have for the majority principle, we would say, that although we find many States enumerated that have adopted the plurality system in the choice of Governors, yet very few, if any, have adopted it in the choice of Representatives to their respective Legislatures.

The object of a change, in our State, from the majority system to the plurality, in the choice of Governor and Senators, would not be productive of any advantage. The desire for this change arises from a wish to do away the necessity for so many meetings and trials for election, as has, of late years, been held, in accordance with the present provisions of the constitution and law. In case of Governor and Senators, the constitution provides that but one popular election should be held, inasmuch that, in case of no choice, the Legislature are directed to make it according to prescribed rules.

In regard to the choice of Representatives, your committee have come to the conclusion that facts warrant some change.

We have all of us seen that such has been the state of political parties in very many districts, that it is often times difficult, if not impossible, to effect a choice.

Some districts met last year, thirteen or fourteen times, without effecting a choice, and during the present winter, some districts are not yet represented, although six successive meetings have been held for the purpose of effecting a choice. This state of things certainly demands a remedy.

We would therefore beg leave to report the accompanying Resolve, providing that in case of no choice of Representative on the first trial by a majority, a plurality shall elect on the second meeting held for the purpose of choosing said officer.

Upon the other question submitted to us, viz: the change in regard to holding the sessions of the Legislature, from an annual one to biennial, being one of mere economy, involving no fundamental or essential principle of the modes of election, or procedure after

election, we recommend no action, it being but a few years since the people acted upon and negatived it.

All of which is respectfully submitted.

SOLOMON BROOKS,
JOHN ANDERSON,
JOSEPH BROWN,
E. HOLMES,
M. B. TOWNSEND,
} *Senate.*

WM. C. ALLEN,
FREDERIC FRYE,
WILLIAM PAINE,
WILLIAM NOYES,
JAMES M. LEACH,
PAUL PEARSON,
JOHN KING,
} *House.*

STATE OF MAINE.

RESOLVES to amend the Constitution relative to the election of Representatives to the Legislature by plurality of votes.

RESOLVED, *by the Senate and House of Representatives in Legislature assembled*, That the fifth section of the first part of article fourth of the Constitution, which provides that a majority of votes shall be necessary to elect a Representative to the Legislature, shall be so altered and amended by striking out the words—"at every future meeting until an election shall have been effected" and inserting after the words—"same proceedings shall be had," the following words, viz:—WHEN THE PERSON WHO SHALL HAVE THE HIGHEST NUMBER OF VOTES SHALL BE DECLARED ELECTED, AND THE ALDERMEN OF CITIES, THE SELECTMEN OF TOWNS NOT CLASSED, OR THE SELECTMEN OF TOWNS AND ASSESSORS OF PLANTATIONS CLASSED, SHALL FORM A LIST OF PERSONS VOTED FOR, WITH THE NUMBER OF VOTES OF EACH PERSON AGAINST HIS NAME, CERTIFIED IN THE WAY AND MANNER HERETOFORE PRESCRIBED, AND HAND IT TO THE PERSON SO ELECTED WITHIN TEN DAYS NEXT AFTER SUCH ELECTION. AND IN CASE NO CHOICE IS EFFECTED, THE SAME PROCEEDINGS IN RELATION TO THE TIME OF HOLDING FUTURE MEETINGS AS IS PROVIDED BY LAW SHALL BE HAD UNTIL A PLURALITY OF VOTES SHALL ELECT. *Provided*, that a majority of the inhabitants of this State, who are constitutionally entitled to vote for State officers, shall at the annual meetings to be held on the second Monday of September next decide in favor of such amendment.

RESOLVED, That it shall be the duty of the aldermen of cities, selectmen of towns and assessors of plantations, in this State, to insert an article in their warrants respectively, by which the annual meetings in September next shall be notified and called, to require the inhabitants constitutionally qualified to vote as aforesaid, to give in their votes on the question, whether the proposed amendment to the constitution shall be made—those in favor of amending voting YEA, those opposed, voting NAY. And it shall be the duty of the said aldermen, selectmen and assessors to receive the votes of said inhabitants in such manner as a majority thereof shall direct, and it shall be the duty of the clerks of the said cities, towns and plantations respectively, to make a true record of the votes so received and counted, and to make a fair copy of the same, which shall be duly attested by the said aldermen and clerks of cities, and selectmen and clerks of towns, and the assessors and clerks of plan-

tations, and sealed up in open town meeting, and t
clerks of the several cities, towns and plantations r
pectively, shall cause the same to be delivered into t
office of the secretary of State twenty days at lea
before the first Wednesday of January in the year
our Lord one thousand eight hundred and forty five
And the secretary of State shall lay the same befor
the legislature; and if it shall be found that a major
of the votes so returned shall be in favor of the amen
ment proposed as aforesaid, said amendment sha
then be considered as adopted, and shall form a par
of the constitution of this State.

AN ACT ADDITIONAL

TO CHAPTER FOURTEEN OF

THE REVISED STATUTES.

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6-1965

Nineteenth Century Constitutional Amendment in Maine

Peter Neil Berry

NINETEENTH CENTURY CONSTITUTIONAL AMENDMENT IN MAINE

By

PETER NEIL BARRY

B.A., Seton Hall University, 1962

A THESIS

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Orono

June, 1965

happenings had frayed tempers. Plaisted's blast was motivated by rulings unpleasing to him and the Fusionists. The Court had been frequently called upon for opinions over the years and had always responded—not necessarily in a unanimous voice—but their opinions had been thoroughly considered. Rarely had the justices attempted to do more than point out "the path of constitutional duty and power."[7]

III. THE PLURALITY SYSTEM OF ELECTIONS

Sixty-six districts—over forty per cent of the total number—had no choice for representatives during the annual state election of 1846. This had been the largest number ever of representative districts remaining unfilled after the first trial. The reason was a multiplicity of parties and divisive issues that rendered a majority vote not easily obtainable. Persistent re-balloting finally assured a full house. Once assembled these men reintroduced and passed a resolve designed to eliminate the recurrence of a similar situation—a plurality of votes was to be sufficient for election.[8]

Once prohibition, abolition, and free soil entered the political arena, Maine could no longer ignore isolated pleas for plurality elections on the state level. The legislative balance of power was often held by a small but effective group of splinter parties; continuance of responsible government was not a minor consideration.

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[7] Senate Documents, 1881, 101:3 rejects Plaisted's claim.

[8] Maine Farmer, October 1, 1846; Senate Documents, 1844, 38:8.

For several years the legislators would not take the logical final step. They proposed that only the names of the two highest vote getters be entered on the second trial or they suggested that if a majority was not obtained at the first election the second would require only a plurality. Still others wished plurality elections to commence only with the third balloting.[9]

Protracted debate plus more than a dozen amendments to an 1847 resolve resulted in a bill to elect the governor and state senators, as well as state representatives, by plurality vote.[10] Able to cast separate ballots for each of the three proposed changes the voters accepted the plurality election of representatives by a margin as small as that by which they rejected the other two. The official totals were:[11]

GOVERNOR	REPRESENTATIVES	SENATORS
Yes—14,022	Yes—13,738	Yes—13,393
No—14,390	No—13,114	No—13,526

Two reasons may be offered for the vote. One, the voting public had to sacrifice time and effort to finally elect representatives; the legislature had to determine unchosen governors and senators. Two, the area of responsibility of the representative was

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[9] House Documents, 1833, 8:1-3; Senate Documents, 1844, 38:4-11; 1845, 8:1-2; Maine Farmer, January 30, February 6, and March 20, 1845.

[10] See Appendix E. Compare the original resolve, House Documents, 1847, 10:1-2 with the final draft, Resolves, 1847, 45:31-32. Also see House Journal, 1847, pp. 198, 263, 370, 402, 437-438; Senate Journal, 1847, pp. 291, 354-355, 361-362, 410-411, 435-436, 450, 454, 490.

[11] Resolves, 1848, 84:92-93 and House Documents, 1848 contain the official votes on the proposed amendments.

less encompassing than that of a senator and insignificant in comparison with a governor; if a popular vote was unattainable it was assumed that legislators could best determine the most capable officials.

Accepting this reasoning, if one of the two remaining offices was to be ensconced in popular hands through plurality elections it would be the senatorial race and such was the case. Senators represented a single district whereas the governor was normally elected by the people and represented the entire state. Proposed several times before its adoption in 1875 this amendment reflected the growing sentiment toward a final determination of governmental officers by the people. There was no emergency in 1875, as had earlier occurred (see Table IV); rather a belief that a more mature electorate should have increased rights and responsibilities.[12]

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[12]See Appendices E and H; Commission Journal, 1875, pp. 33, 34, 59-60; Public Documents, 1875, 16:6; Presque Isle Sunrise, September 1, 1875; Rogers, Our System, p. 502. Two of the more spectacular battles had occurred in times of political flux. The first (1830) involved an unsuccessful attempt by the National Republicans to elect four of their senators. The examining committee had ignored constitutional procedure; hence Senator (later governor) Robert Dunlap and the Democratic-Republicans boycotted the legislative convention. The Court ruled against the actions of the National Republicans and ordered a new legislative convention which chose four Democratic members to replace the dismissed National Republicans. See Senate Journal, 1830, pp. 68-72, Appendix, ix, x-xix, xxx-xliv for bitter protests authored by Dunlap and others. In 1854 only thirteen senators and no governor had been elected. After weeks of party feuding the Supreme Judicial Court ruled that senatorial vacancies had to be filled before a governor could be chosen in legislative convention. See Hatch, History, 2:365-367; Public Documents, 1854, 12:4-5, 15-16. Also see Governor William Crosby's request for a constitutional change to plurality elections directly resulting from this election impasse. See Senate Journal, p. 71.

TABLE IV

SENATORS NOT OBTAINING A MAJORITY AND ELECTED BY THE LEGISLATURE: 1820-1875

1820	4	1831	0	1842	2	1854	18	1865	0
1821	0	1832	0	1843	6	1855	10	1866	0
1822	4	1833	0	1844	6	1856	5	1867	0
1823	1	1834	1	1845	8	1857	0	1868	1
1824	5	1835	2	1846	11	1858	0	1869	0
1825	0	1836	4	1847	19	1859	0	1870	0
1826	3	1837	3	1848	11	1860	0	1871	0
1827	1	1838	1	1849	18	1861	0	1872	1
1828	2	1839	1	1850	6	1862	0	1873	0
1829	2	1840	0	1851	16	1863	1	1874	0
1830	4	1841	0	1853	8	1864	0	1875	0

Source: Senate Journals for the corresponding years.

Under plurality elections only a tie vote or a vacancy caused by death or resignation would result in a legislative convention of representatives and as many senators were elected to determine—from a list of constitutional candidates—and supply the requisite number of vacancies. Popular election of state senators was carried to its logical conclusion in 1897 when the legislature accorded unanimous approval to a bill directing the governor to order an immediate election in any district in which a vacancy had occurred.[13]

Once the plurality election of senators was assured opponents of the majority system turned en masse toward the chief executive. Several times prior to the Civil War gubernatorial contests had been thrown into the legislature (see Table V). The lower house would then select two of the top four vote getters; the Senate would elect the governor from one of the two men selected by the House. This again became necessary between 1878 and 1880, the year in which the twenty-fourth amendment brought the governor's race into conformity with the plurality system.[14]

Table V illustrates that on more than one occasion the candidate having the most votes (a plurality) but not a majority was not elected by the lawmakers. This was hardly in the democratic tradition; the legislature could and did thwart the wishes of a large

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[13]See Appendix E. Compare Revised Statutes, 1871, pp. 29-30, 4:2:5 with Resolves, 1875, 89:30 and 1897, 259:117. The 1897 amendment received overwhelming (15,080—1,856) popular approval. See Resolves, 1901, p. 127.

[14]Resolves, 1880, 159:151-152.

TABLE V

MAJORITY SECURED BY SUCCESSFUL GUBERNATORIAL CANDIDATES: 1820-1880

Year	Governor Elected	Total Vote	His Vote	Majority
1820	King	22,014	21,083	10,076
1821	Parris	24,388	12,887	683
1822	Parris	22,180	15,476	4,386
1823	Parris	19,400	18,550	8,850
1824	Parris	20,439	19,779	9,559
1825	Parris	15,252	14,206	6,580
1826	Lincoln	21,063	20,639	10,107
1827	Lincoln	20,458	19,969	9,740
1828	Lincoln	28,109	25,745	11,690
1829	Hunton	46,551	23,315	139
1830	Smith	58,092	30,215	1,169
1831	Smith	50,219	28,292	3,182
1832	Smith	60,597	31,987	1,688
1833	Dunlap	49,352	25,731	1,055
1834	Dunlap	73,031	38,133	1,617
1835	Dunlap	62,683	45,208	13,866

NOTE: By majority is meant the number of votes above and beyond one half of the votes cast. It is not intended to indicate the margin of victory secured. For example: In 1822 Albion K. Parris collected 15,476 of the 22,180 votes cast. His nearest opponent, Ezekiel Whitman, got 5,795 votes. Parris' margin of victory over Whitman was 9,681 votes (15,476 minus 5,795) whereas his majority (the number over half the total ballots cast) was 4,386.

TABLE V (continued)

Year	Governor Elected	Total Vote	His Vote	Majority[a]
1836	Dunlap	54,688	31,837	4,493
1837	Kent	68,528	34,353	89
1838	Fairfield	89,595	46,216	1,418
1839	Fairfield	75,995	41,038	3,040
1840	Kent	91,174	45,597	10
1841	Fairfield	86,153	47,354	4,277
1842	Fairfield	71,780	40,855	4,965
1843	Anderson	63,139	32,029	459
1844	Anderson	93,853	48,942	2,015
1845	Anderson	67,405	34,711	1,008
1846	Dana	75,664	36,031	47.6%
1847	Dana	65,302	33,429	778
1848	Dana	82,277	39,760	48.3%
1849	Hubbard	73,781	37,636	745
1850	Hubbard	80,665	41,203	870
1852[b]	Crosby	94,707	29,127	30.6%[c]
1853	Crosby	83,627	27,061	32.4%[d]

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[a] If only a plurality was obtained it is given as a per centage.

[b] No election in 1851. Supra, chapter 4, section 1.

[c] John Hubbard had 41,999 votes.

[d] A. L. Pillsbury had 51,441 votes.

TABLE V (continued)

Year	Governor Elected	Total Vote	His Vote	Majority
1854	Anson Morrill	90,633	44,565	49.2%
1855	Wells	110,477	48,341	43.8%(e)
1856	Hamlin	119,814	69,574	9,667
1857	Lot Morrill	97,878	54,655	5,716
1858	Lot Morrill	112,898	60,380	3,931
1859	Lot Morrill	102,652	57,230	5,904
1860	Washburn	124,135	70,030	7,962
1861	Washburn	100,503	58,689	8,437
1862	Coburn	81,718	42,744	1,885
1863	Cony	119,042	68,339	8,818
1864	Cony	111,986	65,583	9,590
1865	Cony	86,073	54,430	11,393
1866	Chamberlain	111,892	69,637	13,691
1867	Chamberlain	103,753	57,332	5,455
1868	Chamberlain	131,782	75,523	9,632
1869	Chamberlain	95,082	51,314	3,773
1870	Perham	99,801	54,019	4,118
1871	Perham	105,897	58,285	5,336
1872	Perham	127,266	71,888	8,255
1873	Dingley	80,953	45,244	4,767

(e)Anson Morrill had 51,441 votes.

TABLE V (continued)

Year	Governor Elected	Total Vote	His Vote	Majority
1874	Dingley	95,300	50,865	3,215
1875	Connor	111,665	57,812	1,979
1876	Connor	136,823	75,867	7,453
1877	Connor	102,058	53,585	2,556
1878	Garcelon	126,169	28,208	22.4%(f)
1879	Davis	138,806	68,967	49.8%
1880	Plaisted	147,802	73,713	49.9%

(f)Connor (Republican) had 56,554; Joseph L. Smith, the Greenback candidate, had 41,371 votes.

SOURCE: Adapted from Annual Register of Maine, 1960-1961, (Portland: Fred L. Tower Companies, 1960), pp. 140-142.

minority of the population on several occasions. The swift passage of the 1880 resolve—when it had been rejected in 1875 while senatorial plurality was receiving unanimous legislative approbation—indicates that a reawakened tri-partisan awareness of a constitutional defect and of popular sentiment demanding a remedy for the situation.[15] Passage of the twenty-fourth amendment also marks legislative surrender of the last significant check upon the popular sovereignty of statewide elective offices.[16]

IV. THE APPOINTIVE POWER OF THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT TO 1856

Unless otherwise provided for the governor and council have always had the right to appoint all judicial, civilian, and

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[15] See Appendices E and H; Daily Whig and Courier, January 30, 1875; Public Documents, 1875, 16:6; Commission Journal, 1875, pp. 35, 57, 59.

[16] The popular vote was 57,015—35,402, Resolves, 1881, pp. 102-103. The question of whether the twenty-fourth amendment was applicable to the 1880 election was raised by several legislators who claimed that the unamended majority rule (5:1:3) was in effect the day that Harris M. Plaisted was elected by a plurality vote, hence the election should be decided in the legislature. Technically they were correct for the constitution (10:4) stated that "if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of of this constitution." The actual resolve voted upon in 1880 stated that if it shall appear to the governor and council, upon examination of the returns, that a majority had been secured "it shall then be a part of the Constitution." This was so done by Governor Daniel Davis on November 9, 1880. Nevertheless Plaisted's plurality stood up because of: 1)the general understanding that despite the language of the resolve the amendment would apply to the 1880 election; 2)Republican fears that their party would suffer if they pressed the technicality; and 3)a poor reflection on the Supreme Judicial Court if it was forced to rule against Plaisted to

INTRODUCTION TO APPENDICES A THROUGH G

Each one of these Appendices corresponds to a chapter of the thesis. Chapter 1 is supplemented by Appendix A; chapter 2 by Appendix B, and so forth. These Appendices give a condensation of legislative action upon proposed amendments throughout the nineteenth century. They follow the progress of the amendment, from its introduction to its final disposition. These Appendices, whose information has been obtained from the Journals of both houses, are not absolutely complete as a few early volumes could not be obtained or the information contained therein was complete.

There are thirteen columns on each page, each column being one of the possible legislative actions. The number beneath the column indicating when the proposal reached that point. For example, on the first page of Appendix A, concerning apportionment of the House of Representatives, the 1840 Senate voted to send such a proposal to committee, subsequently reconsidered their action, then recommitted the proposal. The committee presented a resolve which was read thrice, passed to be engrossed; the last action was reconsidered, and the Senate's final action was to refer the bill to the next legislature. House action was similar through the second reading, then the House voted to refer the bill to the next legislature rather than act further on the measure. Whenever a number is underscored (for example, 4) it means that the House or the Senate failed to approve that action. This series of Appendices will be of most value when used in conjunction with the text of the thesis.

APPENDIX E

LEGISLATIVE ACTION UPON THE BALANCE OF POWER IN THE STATE GOVERNMENT

PLURALITY ELECTION OF STATE REPRESENTATIVES

	To Committee	Bill Presented	Inexpedient	First Reading	Second Reading	Third Reading	Amended	Indefinitely Postponed	Recommitted	Previous Action Reconsidered	Refer to Next Legislature	Engrossed	Final Passage
Senate 1843	1	2									3		
House	1	2									3		
Senate 1844	1	2		3				4					
House	1	2		3				4					
Senate 1845	1	2		3	4		5					6	
House	1	2		3	4						5		
Senate 1846	1	2		3	4							5	
House	1	2		3	4							5	
Senate 1847	1	2		3		4,7			6,9			5,8, 10	11
House	1	2		3		4,7, 10			6,9, 12			5,8. 11,13	14

PLURALITY ELECTION OF STATE SENATORS

	To Committee	Bill Presented	Inexpedient	First Reading	Second Reading	Third Reading	Amended	Indefinitely Postponed	Recommitted	Previous Action Reconsidered	Refer to Next Legislature	Engrossed	Final Passage
Senate 1843	1	2									3		
House	1	2									3		
Senate 1844	1	2		3				4					
House	1	2		3				4					
Senate 1846	1												
House	1												
Senate 1847	1	2		3			4,7			6,9		5,8, 10	11
House	1	2		3			4,7, 10			6,9, 12		5,8, 11,13	14
Senate 1853	1								3	2			
House	1								3	2			
Senate 1854	1	2		3	4			5					
House	1	2		3	4			5					
Senate 1856	1		2										
House	1		2										
Senate 1857	1		2										
House	1		2										
Senate 1858	1		2										
House	1		2										

PLURALITY ELECTION OF SENATORS (continued)

	To Committee	Bill Presented	Inexpedient	First Reading	Second Reading	Third Reading	Amended	Indefinitely Postponed Recommitted	Previous Action Reconsidered Refer to Next Legislature	Engrossed	Final Passage
Senate 1863	2	1		3	4				6	5, 7	
House	2	1		3	4		5	6, 8	7		
Senate 1874	1		2								
House	1		2								
Senate 1875		1		2	3					4	5
House		1		2	3					4	5

Amendment XIII (1875) established plurality election of senators; a similar bill had been defeated by the people in 1847.

PLURALITY ELECTION OF THE GOVERNOR

Senate 1843	1	2							3		
House	1	2							3		
Senate 1844	1	2		3			4				
House	1	2		3			4				
Senate 1846	1										
House	1										

PLURALITY ELECTION OF THE GOVERNOR (continued)

	To Committee	Bill Presented	Inexpedient	First Reading	Second Reading	Third Reading	Amended	Indefinitely Postponed	Recommitted	Previous Action Reconsidered	Refer to Next Legislature	Engrossed	Final Passage
Senate 1847	1	2		3			4,7			6,9		5,8, 10	11
House	1	2		3			4,7, 10			6,9, 12		5,8, 11,13	14
Senate 1853	1								3	2			
House	1								3	2			
Senate 1854	1		2										
House	1		2										
Senate 1856	1		2										
House	1		2										
Senate 1857	1		2										
House	1		2										
Senate 1858	1		2										
House	1		2										
Senate 1875		1		2	3					5		4,6	
House		1		2	3							4	
Senate 1879	1		2										
House	1		2										
Senate 1880	2	1, 3		4	5							6	7
House	2	1, 3		4	5							6	7

Amendment XXIV (1880) was rejected by the people in 1847.

Affidavit of Jeanne Massey

AFFIDAVIT OF JEANNE MASSEY

I, Jeanne Massey, being duly sworn, hereby depose and state as follows:

1. I am the Executive Director of FairVote Minnesota and have been since 2007. I was the campaign manager for a citizen-initiative to enact ranked choice voting ("RCV") adopted by the voters in Minneapolis in 2006 and have worked on the successful implementation of that measure since its adoption. I am also an election judge.

2. RCV has been used in municipal elections in Minnesota's two largest cities since 2009. Since that time, over 215,000 ranked choice ballots have been cast in the cities of Minneapolis and St. Paul to determine winners in 54 municipal races.

3. Minneapolis voters approved a charter amendment in 2006 by a nearly two-to-one margin mandating the use of RCV for municipal elections. RCV was first used in the November 2009 elections. The implementation was a tremendous success, with 95 percent of voters polled – and 97 percent of people of color polled – reporting that they found the ballot easy to use. In 2013, RCV was used in the first open mayoral contest. It was a highly competitive election with 35 candidates. Voters proved they understood the process, with nearly 90 percent ranking their ballot for mayor. RCV ensured that the consensus candidate emerged as the winner and provided Minneapolis voters with the opportunity to express their true preferences about the candidates without worrying about vote splitting or the need for strategic voting.

4. St. Paul voters approved RCV in 2009, and have used it in city council elections in 2011, 2013 and 2015. In 2017, St. Paul voters will use RCV for the first time in an open mayoral contest. In 2015, in all but one race, winners emerged on Election Night winning a majority of first choice rankings. In the one council race that required multiple rounds of tabulation, reallocation was completed in four hours with the winner emerging with a

decisive 53% of the vote in the final round. The St. Paul elections manager noted that the 2015 election was the smoothest he'd ever seen.

5. In Minneapolis, elections are conducted using the same DS-200 machine used by 90 percent of voters throughout Maine. In St. Paul, elections are conduced using Hart InterCivic machines, with ballots in races that require RCV reallocation currently counted by hand. In RCV elections in both these cities, ballots are machine-scanned and counted at the precinct level and the total votes for each candidate are recorded (117 precincts in Minneapolis and 96 precincts in St. Paul). Each precinct report looks something like the following for each candidate: Candidate A has 450 first preference votes, 325 second preference votes and 200 third preference votes. The RCV tabulation and allocation process is completed at the central counting center for those races that are not decided by a majority of first preference votes. If no candidate receives a majority of voters' first preferences, the last place candidate(s) are eliminated and those candidates' second preferences, which have already been counted, are reallocated to the remaining candidates. Since 2009, two or more rounds of tabulation have been needed in 13 single member district municipal elections in Minneapolis and St. Paul to determine winners.

6. It is important to understand the difference between counting and tabulation and reallocation in analyzing RCV. Contrary to the suggestion in the Affidavit of Julie Flynn, a centralized location is not necessary to *count* RCV ballots. In Minneapolis, the DS-200 in each precinct can read and does "count" the preferences on each ballot. In a three-way race with 1,000 ballots, for example, the DS-200 will count all the first preferences for Candidates A, B, and C from all the ballots, the second place preferences for each of the candidates and the third place preferences. On election night, the machines at each precinct provide a report of the total first, second and third preferences for each

candidate. These results are then sent electronically to the central counting center to be aggregated for each race, just as the Maine Secretary of State aggregates all the statewide votes in a gubernatorial race.

7. The DS- 200 system creates a data file of the cast vote record of each ranked ballot and this file is then exported. The city election officials then can create a spreadsheet setting out the results of that counting process for each race, which looks something like the following: Candidate A has 450 first preferences, Candidate B 325, and Candidate C 225; Candidate A has 200 second preferences, Candidate B 200, and Candidate C 100, with 50 ballots failing to indicate a second preference. Those preferences have all been counted locally and the exported cast vote record identifies each voter's ballot by precinct. Just as in Portland, Maine, now, these counts are then tabulated according to the RCV algorithm to determine the winner, in rounds, if no candidate has a majority in the first round. But this process doesn't involve any counting; rather the computer software (in the case of Maine or spreadsheet system in the case of Minneapolis) merely aggregates and allocates the locally-counted preferences to determine the ultimate winner. In other words, while there is more information to process, the ballot counting process remains unchanged in RCV from the current system used in Maine described by Ms. Flynn.

8. Similar to the DS-200 system, St. Paul's Hart InterCivic equipment reads, records and tallies the rankings for each candidate. So that the same counting process occurs at the local precinct level. Results are tabulated for each race and any necessary reallocation occurs at the central counting center, again just as tabulation is done in Maine now under RCV in Portland or in traditional elections across Senate districts or in state-wide races. In both Minneapolis and St. Paul, the process is neither burdensome nor chaotic for election administrators, candidates, or voters. By the next election cycle, both cities

anticipate having fully automated RCV reallocation software which will provide for faster election results.

9. Casey Joe Carl, the city clerk for Minneapolis, Patrick O'Connor, his predecessor, and I would be pleased to come to Maine to consult with election officials, or help in any way we can, to assure that the implementation of ranked choice voting in Maine is as smooth as it has been for our elections. Although Mr. Carl has extensive experience with RCV, he informed me that the Maine Secretary of State's office has not been in touch with him to discuss ways to implement RCV.

DATED: March 16, 2017

Jeanne Massey

STATE OF MINNESOTA
COUNTY OF HENNEPIN, ss.

March 16, 2017

Personally appeared Jeanne Massey, and made oath that the statements contained in the above affidavit are based upon her personal knowledge, information, and belief, and that where made upon her personal knowledge they are true and where made upon information and belief that she believes them to be true.

Notary Public
Print Name: MARY R JARUSZEWSKI
My Commission Expires: 01/31/2020

MARY ROSE JARUSZEWSKI
NOTARY PUBLIC - MINNESOTA
My Commission Expires
January 31, 2020